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RIGHTS OF THE CHILD

Question of a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, as well as basic measures needed for their eradication

Report of the working group on its second session

Chairman-Rapporteur: Mr. Iván Mora Godoy (Cuba)

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Introduction

1. The Commission on Human Rights, in paragraph 11 of its resolution 1995/78, decided that its open-ended inter-sessional working group should elaborate, as a matter of priority and in close cooperation with the Special Rapporteur and the Committee on the Rights of the Child, and on the basis of the guidelines contained in annex I of the report (E/CN.4/1995/95) of the working group, a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. In paragraph 13, the Commission requested the working group to meet for a period of two weeks prior to the fifty-second session of the Commission to pursue its mandate.

2. The Economic and Social Council, in its resolution 1995/35, authorized the working group to meet for a period of two weeks prior to the fifty-second session of the Commission.

I. ORGANIZATION OF THE SESSION

A. Opening and duration of the session

3. The session of the working group was opened by the High Commissioner for Human Rights, who made a statement. During the session, the working group held 18 meetings from 29 January to 9 February 1996 and on 22 March 1996.

B. Election of the Chairman-Rapporteur

4. At its first meeting, on 29 January 1996, the working group re-elected Mr. Iván Mora Godoy (Cuba) Chairman-Rapporteur. At its 18th meeting, on 22 March 1996, Mr. Miguel Alfonso Martinez (Cuba) was designated to replace the Chairman for the purpose of the adoption of the report.

C. Participation

5. The representatives of the following States members of the Commission at its fifty-first session attended the meetings of the working group, which were open to all members of the Commission: Algeria, Australia, Austria, Bangladesh, Brazil, Bulgaria, Canada, Chile, China, Colombia, Cuba, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, France, Germany, India, Italy, Japan, Malaysia, Mexico, Nepal, Netherlands, Pakistan, Peru, Philippines, Republic of Korea, Russian Federation, Sri Lanka, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela.

6. The following States non-members of the Commission were represented by observers: Argentina, Belgium, Finland, Greece, Iran (Islamic Republic of), Iraq, Israel, Kenya, Libyan Arab Jamahiriya, New Zealand, Nigeria, Norway, Romania, Slovenia, Sudan, Sweden, Syrian Arab Republic, Thailand, the former Yugoslav Republic of Macedonia and Uruguay.

7. The following non-member States of the United Nations were also represented by observers: Holy See and Switzerland.

8. The following United Nations body was represented by observers: United Nations Children's Fund.

9. The International Committee of the Red Cross was also represented by an observer.

10. The observer for the League of Arab States attended the session of the working group.

11. The following non-governmental organizations in consultative status with the Economic and Social Council were represented by observers at the meetings: American Association of Jurists, Baha'i International Community, Defence for Children International, Education International, International Abolitionist Federation, International Catholic Child Bureau, International Federation of Red Cross and Red Crescent Societies, International Federation of University Women, International Service for Human Rights.

12. Pursuant to the invitation contained in paragraph 15 of Commission resolution 1995/78, the Special Rapporteur on the sale of children, child prostitution and child pornography attended the session of the working group; Mrs. Ofelia Calcetas-Santos was present from 29 January to 2 February 1996.

13. Following the invitation contained in paragraph 15 of Commission resolution 1995/78, the Committee on the Rights of the Child was represented at the meetings of the working group. At the 8th meeting, on 1 February 1996, Mrs. M. Santos Pais, Rapporteur of the Committee on the Rights of the Child, delivered a statement on behalf of the Committee. Mrs. Santos Pais was accompanied by Mr. Kolosov, another member of the Committee.

D. Documentation and organization of work

14. The working roup had before it the following documents:

E/CN.4/1996/WG.14/1	Provisional agenda
E/CN.4/1996/WG.14/2 and Add.1-2	Comments on the guidelines for a draft optional protocol: report of the Secretary-General prepared pursuant to paragraph 12 of Commission resolution 1995/78
E/CN.4/1995/95	Report of the first session of the working group on a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, as well as the basic measures needed for their prevention and eradication

A/50/456	Note by the Secretary-General transmitting the report on the sale of children, child prostitution and child pornography, submitted by Mrs. Ofelia Calcetas-Santos, Special Rapporteur, pursuant to General Assembly resolution 49/210
E/CN.4/Sub.2/1995/29 and Add.1	Report of the Secretary-General on the implementation of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography

15. The working group also had before it the text of the Convention on the Rights of the Child (General Assembly resolution 44/25, annex) and the text of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography (Commission on Human Rights resolution 1992/74, annex).

16. The working group adopted its agenda, as contained in document E/CN.4/1996/WG.14/1, at its 1st meeting, on 29 January 1996.

17. In order to facilitate the process of negotiations during the second session of the working group, the Chairman-Rapporteur proposed to appoint coordinators who would act as leaders in conducting informal consultations between delegations on all basic issues contained in the Guidelines for a possible draft optional protocol, (E/CN.4/1995/95, annex I).

18. Following this proposal, the following delegations agreed to act as coordinators:

(a) Philippines - on chapter II (Definitions);

(b) United States of America - on chapter III (Implementation of pertinent instruments);

(c) France and Bangladesh - on chapter IV (Penalization, compensation and protection of children);

(d) Australia - on chapter V (International cooperation and coordination);

(e) Uruguay - on chapter VI (Assistance and rehabilitation);

(f) Russian Federation - on chapter VII (Information, education and participation).

II. GENERAL DISCUSSION

A. General debate

19. At its 1st, 2nd and 3rd meetings, on 29 and 30 January 1996, the working group, at the invitation of the Chairman-Rapporteur, held a general discussion on various questions relating to its mandate and the content of the future protocol. Statements of a general character were also made by some delegations at a later stage, during the consideration of various proposals.

20. All participants agreed to condemn all forms of exploitation of children, in particular the sale of children, child prostitution and child pornography. They also expressed their full support for various efforts aiming at ending those violations of children's rights.

21. Many delegations reaffirmed the necessity of drafting an optional protocol to the Convention in combating the sale of children, child prostitution and child pornography, bearing in mind the negative consequences of these offences.

22. While all participants expressed their concern and recognized the need to combat the practices of the sale of children, child prostitution and child pornography, different opinions were expressed with regard to the ways and means to address this problem at the international, regional and national levels. It was felt by some participants that the Convention on the Rights of the Child and the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography provided the necessary legal and organizational framework to protect children from various kinds of exploitation, in particular sale, prostitution and pornography. Urgent action was needed in order fully to implement the relevant provisions of the Convention. In that regard, several delegations considered that the protection of children from exploitation, in particular sexual exploitation, would be better achieved by the enforcement of existing international instruments and norms rather than by the creation of new international instruments.

23. It was also stated that the discussion of a possible optional protocol on the sale of children, child prostitution and child pornography must not hinder the implementation of existing instruments at the national and international levels and must not divert resources away from appropriate immediate actions.

24. Some delegations emphasized the need to avoid duplication of efforts and the proliferation of international instruments. They feared that a protocol would be a repetition of provisions already existing in the Convention on the Rights of the Child. The national laws of some countries already fully covered the problems of the sale of children, child prostitution and child pornography.

25. The majority was that an optional protocol would create complementary obligations for States and would thus reinforce the criminalization of the sale of children, child prostitution and child pornography. It was recalled that the working group's mandate was to elaborate an optional protocol on the basis of the guidelines prepared during its first session. The main objective

of the future protocol should be to fill the gaps in existing international standards. Reference was made in this connection to General Assembly resolution 41/120.

26. Many participants expressed their concern with regard to the scope of the protocol which would be determined by the definitions given to the notions of sale, prostitution and pornography. They agreed upon the need and the importance of establishing clear definitions of the three concepts.

27. Several delegations felt there was no absolute need to spend time and effort in an attempt to define such highly complicated concepts as the sale of children, prostitution and, especially, pornography. It was noted in this connection that in the national legislation of some countries these concepts were not defined and that there is no definition of "sexual exploitation" in the Convention on the Rights of the Child, nor of the sale of children, child prostitution and child pornography. The objective was to have a new legal instrument, rather sooner than later. A prolonged debate on definitions could be counter-productive.

28. Another view was that any legal document should define its basic concepts, and the absence of such definitions would hinder the implementation of the instrument. Some delegations emphasized the need to define sale of children, child prostitution and child pornography in order to set international standards. In the context of the discussion on the need for definitions, it was mentioned that a precedent existed in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, of 2 December 1949.

29. A number of delegations expressed the view that the definition of sale of children must strike a balance between the forces of supply and demand.

30. While some delegates considered that the future protocol should have a wide scope, others preferred a more focused protocol. The Commission on Human Rights should decide what kind of an optional protocol it would like to have.

31. While some participants considered that the protocol should reinforce the implementation of articles 34 and 35 of the Convention, which they considered to be too vague, others considered that the protocol should not limit its scope to sexual exploitation but extend to all types of exploitation. Some delegations considered that the protocol should extend its application to articles 20, 21, 32 and 33 of the Convention in order to cover, inter alia, adoptions and forced labour of children.

32. Other delegations favoured an approach focusing specifically on the sale of children for prostitution and pornography, as well as on child prostitution and pornography as such.

33. Some doubts were expressed as to the optional character of the possible protocol. No reservations or declarations had been made with regard to articles 34 and 35 of the Convention on the Rights of the Child. It was therefore considered that such unanimous agreement of States parties could lead to the adoption of an additional protocol having a binding character.

34. Some participants warned the working group not to re-open issues on which a consensus had been reached during the drafting of the Convention itself.

35. Many participants expressed their concern with regard to sex tourism and insisted on the inclusion in the optional protocol of provisions on the extraterritoriality, extradition and the double criminality rule. In that context, it was felt that international cooperation should be one of the main issues of the future protocol. Concern was expressed by some delegations with regard to what they considered to be an intention to expand the mandate of the working group beyond what had been established by the Commission on Human Rights. A reference was made in that connection to the issue of child sex tourism which was not mentioned in the relevant Commission resolution.

36. Another view was that sex tourism was a phenomenon that directly promoted the sale of children, child prostitution and child pornography, and to which children are specially vulnerable and that the issue of child sex tourism was therefore very much a part of the mandate of the working group.

37. The attention of the working group was drawn to the importance of establishing the jurisdiction of States over the offences relating to the sale of children, child prostitution and child pornography committed by foreigners within their territory. Some delegations thought it useful to consider the applicability of the principle of extraterritoriality to permanent residents as well as nationals. In that connection mention was made of articles 5 to 9 of the Convention against Torture.

38. The need to strengthen international cooperation was emphasized by several delegations who argued that poverty and lack of economic resources, particularly in developing countries, were the primary causes of the exploitation of children. The eradication of sexual and other forms of exploitation of children depended on the elimination of poverty. Therefore, mutual cooperation was necessary for the elimination of such factors of exploitation as hunger and underdevelopment.

39. Some delegations considered it of primary importance to include provisions regarding poverty and underdevelopment in the preambular as well as in the operative part of the future protocol. It was, however, felt by other delegations that the future protocol, as a binding legal instrument, should not be drafted as a political declaration, bearing in mind that the Convention on the Rights of the Child already contained provisions on socio-economic issues such as poverty and underdevelopment. The inclusion of provisions concerning those issues in the protocol would risk modifying and weakening the language agreed upon in the Convention itself.

40. It was also stated that while poverty could be an explanatory element in determining the factors leading to exploitation of children, it should not be considered as a justification of those abhorrent practices. Other delegations pointed out that while there could be no justification whatsoever for such practices, it was a fact that children from developing countries were more vulnerable to exploitation, making it necessary to address the root causes of exploitation, including poverty and underdevelopment.

41. Some delegations raised the role of modern telecommunications and the electronic media in spreading child pornography. Mention was made of the reports submitted by the Special Rapporteur on the sale of children, child prostitution and child pornography which addressed this question.

42. Mention was also made by many delegations of the World Congress on Commercial Sexual Exploitation of Children to be held in Stockholm from 27 to 31 August 1996, which was presented as the first international forum where Governments, experts, NGOs and professionals, in particular in the area of tourism, from all over the world would meet to discuss and adopt concrete national and international actions. The Swedish Government was warmly thanked for its readiness to host the Congress. Some participants also referred to the Beijing Platform for Action, which included the issues of the sale of children, child prostitution and child pornography.

43. Recalling paragraphs 11 and 15 of Commission resolution 1995/78, the participants extended their thanks to the Special Rapporteur and to the representatives of the Committee on the Rights of the Child for their participation in the deliberations.

44. At the 3rd meeting, on 30 January 1996, the Special Rapporteur on the sale of children, child prostitution and child pornography made a statement. She considered that the future optional protocol should address the existing gaps in the Convention on the Rights of the Child and provide for urgent measures to remedy the exploitation of children. The optional protocol should, therefore, be supplementary to the provisions of the Convention and other pertinent norms and mechanisms and should enhance the implementation of the Convention.

45. The Special Rapporteur stressed the importance of having the maximum number of States participate in the drafting and ratification of the protocol. For that purpose, the working group should concentrate on a smaller common denominator. She also stressed that the first task of the working group was to determine the scope of the future optional protocol by establishing the definition of the three parameters of its mandate.

46. With regard to the definitions, the Special Rapporteur felt that since two of the aspects concern sexual exploitation of children, the sale of children could be taken up in connection with child prostitution and pornography. This approach would enable the working group to address the issue of the sexual exploitation of children in all its aspects. In this regard, the Special Rapporteur noted that the concept of sale included aspects other than sexual exploitation. However, the working group might wish to focus mainly on sale for child prostitution and child pornography.

47. The Special Rapporteur felt that, in establishing new international standards, the optional protocol should focus on the international criminalization of the sale of children, child prostitution and child pornography and on decriminalization of child victims. With regard to sex tourism, the Special Rapporteur drew the attention of the working group to the need to emphasize the responsibility of both the sending and the receiving States. She also stressed the importance of preventive measures.

48. At the 8th meeting, on 1 February 1996, Mrs. Santos Pais and Mr. Kolosov, made statements on behalf of the Committee on the Rights of the Child and took part in the discussions. In their statements they stressed the political value of the Convention which had been ratified by 186 States, as well as its comprehensive nature and effective capacity to prevent the sale of children, child prostitution and child pornography, to protect children therefrom, to ensure their physical and psychological recovery and social reintegration, and meaningfully to promote measures of international cooperation and solidarity. While the Committee firmly believed that, as a priority step, the implementation of the Convention should be effectively ensured, it also recalled that other important legal instruments existed to protect children from exploitation. The working group on Contemporary Forms of Slavery of the Sub-Commission on Prevention of Discrimination and Protection of Minorities was devising important and comprehensive strategies to ensure implementation of the existing instruments and to give guidance in specific areas where action should be undertaken. Special reference was made to the two Programmes of Action adopted by the Commission on Human Rights on the sale of children, child prostitution and child pornography and for the elimination of child labour. Reference was also made to the activities undertaken in the area of crime prevention and criminal justice, in particular the proposal to draft an international convention on the illicit traffic in children and the request addressed to the Secretary-General to organize a meeting of experts on the prevention of the sexual exploitation of children for commercial purposes within the context of international travel.

49. Finally, the members of the Committee recalled the need stated by the World Conference on Human Rights to maintain consistency with the high quality of existing standards and to avoid proliferation of human rights instruments. In that connection priority lay with strengthening the implementation of existing international standards. Should a need for more precise guidance for States be identified, then a set of general guidelines could be envisaged.

B. Views expressed by delegations

50. The Chinese delegation expressed the view that it was necessary to have provisions on extradition and judicial assistance in the protocol. However, they should be stipulated in general terms and specific negotiations should be conducted at the bilateral level. Concerning the provision on decriminalization of child victims under the age of 18, the representative of China expressed the concern that it might lead to conflicts with national legislation. The formulation therefore needed to be improved.

51. With regard to the same question, the representative of the United States of America stated that his delegation had a fundamental problem with the text since it gives immunity to persons under the age of 18 years for acts which are liable to punishment under domestic legislation.

52. The Argentine delegation was unable to support the proposal by Nigeria (see para. 125), as such a provision, in the normative part of the text, would constitute a mitigating factor in respect of the offence in question. In a spirit of consensus it would be able to support the text proposed by the representative of Chile (see para. 128).

53. With regard to the section dealing with protection of children, the observer for Nigeria considered it necessary to modify the title to read: "Protection of child victims" in order to avoid duplication with the Convention.

54. The Mexican delegation said that the draft protocol should stipulate that States parties were required to classify as offences under their domestic legislation, the illicit sale of, and trafficking in, children; unlawful international adoptions for profit, incitement to mendicity, drunkenness, drug addiction and illicit employment, incitement to participate in a criminal association, sexual abuse of minors, and incitement to child prostitution and the use of children for pornographic purposes. The draft protocol should also contain provisions relating to the adoption by States parties of legal measures and provisions to try their nationals and aliens who commit the above acts on territory under their jurisdiction or control, as well as their own nationals who commit such acts abroad. In that connection, States parties should review their respective legislative provisions on extradition so as to include in them the acts in question.

55. The Colombian delegation pointed out that, although there are a wide variety of ways of addressing thorny issues and many possible interpretations, it was of the utmost importance to address them immediately, on the understanding that all delegations were desirous of rapidly reaching an agreement on the conceptual framework for the crimes the protocol was intended to punish. The delegation drew the attention of the working group to the ineffectiveness of a document that endeavoured to address in full the multitude of crimes committed against children and which, in spite of their seriousness, were not directly related to sexual abuse and the sale of children. It was the Colombian delegation's view that a profusion of topics in an international instrument that sought to be precise as to what it was intended to punish would be contrary to the very limits which the instrument attempted to establish. Colombia expressed its scepticism about the vagueness of the key objectives of the document which, despite the latter's usefulness at first sight, would cause it to be ineffective in the long term. The Colombian delegation was in favour of dealing with the issue of extradition in similar terms to those of article 8 of the Convention against Torture. It also concurred with the proposal by several delegations to transform the dual criminality rule into one of the mechanisms employed by the protocol to punish the crimes covered by it. The protocol should also provide a firm foundation for proposals relating to international cooperation in order to educate both society as a whole and its most vital unit, the family, in order to prevent those abhorrent offences. International cooperation to vanquish poverty, the provision of resources to ensure the development of the most vulnerable societies and economies and international cooperation to promote preventive policies were key elements of the protocol.

III. PROPOSALS FOR A DRAFT OPTIONAL PROTOCOL

56. At its 3rd meeting, on 30 January 1996, the working group began its consideration of proposals relating to the guidelines for a possible draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography as contained in the report

of the working group on its first session (E/CN.4/1995/95, annex I), in accordance with its mandate. Various proposals submitted by delegations under each chapter of the guidelines are reflected in the following paragraphs.

A. Introductory part

57. At its 3rd meeting, on 30 January 1996, the working group began its consideration of the introduction to the guidelines reading as follows:

> "In order to promote the best interests of the child, a possible optional protocol should pay particular attention to the need to take all necessary measures, at national and international levels, to prevent and eradicate the practices of sale of children, child prostitution and child pornography, as well as necessary measures for the rehabilitation of victims."

58. The representative of the Philippines proposed to postpone consideration of this chapter until the end of the discussion on the future protocol.

59. The representative of the Netherlands proposed to insert, after the words "best interest of the child", the words "and further implement the relevant provisions of the Convention on the Rights of the Child".

B. Definitions

60. On 31 January 1996, the representative of the Philippines, acting as coordinator for chapter II on definitions, submitted a proposal.

61. The representative of Cuba reiterated the proposal submitted by her delegation at the first session of the working group (E/CN.4/1995/95, para. 46), and requested that it should be considered at the second session.

62. The observer for Nigeria suggested that the proposal submitted by his delegation at the first session of the working group (E/CN.4/1995/95, para. 47) also be considered at this session of the working group.

63. In the course of informal consultations held under the leadership of the representative of the Philippines, various versions and amendments were submitted.

64. On 6 February 1996, the working group had before it a compilation of the latest proposals relating to chapter II on definitions submitted by the coordinator for the chapter. The proposals read as follows:

> "For the purposes of this Optional Protocol the following definitions shall apply:
>
> "1. 'Sale of children' means the act of buying and selling of a child [between any person [or institution] having custody or control over the child, and any other person [or institution]] for the purpose of child prostitution [or] child pornography [work of any kind, adoption for commercial purposes, criminal activities, trading in and transplantation of organs] for any form of compensation or reward.

"2. 'Child prostitution' means the act of engaging or offering to a person the services of a child to perform sexual acts with that person or any other person, for any form of compensation or reward.

"3. 'Child pornography' includes both visual and audio pornography.

'Visual pornography' means the visual depiction of a child engaged in explicit sexual activity, [real or simulated,] or the lewd exhibition of [children's] genitals intended for the sexual gratification of the user, and involves the [manufacture,] production, distribution and/or use of such material.

'Audio pornography' means the use of any audio devices using a child's voice, [real or simulated,] intended for the sexual gratification of the user, and involves the [manufacture,] production, distribution and/or use of such material.

OR

"3. 'Child pornography' means a visual or audiovisual representation that shows a person who is or who is depicted as being a child and is engaged in or is depicted as engaged in explicit sexual activity or the dominant character of which is the depiction for a sexual purpose of a sexual organ or the anal region of a child and includes the making, printing, publishing, importing, distributing and possessing of such materials.

"4. 'Child sex tourism' refers to [activities relating to] tourism organized [and advertised] with the [primary] purpose of facilitating the effecting of a commercial sexual relationship with a child."

65. At the 13th meeting, the representative of Canada replaced the second version of paragraph 3 above, which he had submitted earlier, by the following text:

"3. 'Child pornography' means the use of a child in a visual or audiovisual representation that shows the child engaged in or depicted as engaged in explicit sexual activity or the dominant character of which is the depiction for a sexual purpose of a sexual organ or the anal region of a child and includes the making, printing, publishing, importing, distributing, selling and possessing of such materials."

66. During the consideration of these proposals, the working group modified them on the basis of various new proposals and amendments submitted by delegations. The texts relating to chapter II, as modified, are reproduced in the annex (part I).

67. The following substantive proposals and amendments were considered and/or taken into account by the working group.

68. With regard to paragraph 1, the representatives of Mexico and the Philippines proposed that the text submitted by the Russian Federation on 31 January 1996 be included as an alternative text to this paragraph. The text read as follows:

> "Sale of children means and includes all unlawful acts involved in the capture, acquisition, transfer, control or disposal of a child with purposes or intent of securing financial or other reward or consideration."

69. The representatives of Bangladesh, Cuba and Egypt and the observer for Uruguay proposed to add, after the words "[or institution]", the words "for whatever purpose, including".

70. With regard to paragraph 2, the representative of Canada proposed to replace the text by the following:

> "Child prostitution means the act of obtaining, procuring or offering the services of a child to perform sexual acts for any form of compensation or reward, or any acts that are linked to this offence."

71. The representative of Ethiopia suggested to add, after the word "reward" in the text submitted by Canada, the words "even with the consent of the child".

72. The representatives of India, Bangladesh and the Philippines proposed to include, after the words "the services of a child", the words "or inducing a child".

73. Concerning the second option for paragraph 3, the representative of Ethiopia proposed to add, after the word "publishing", the word "advertising".

74. The representative of Australia proposed to include, as an alternative wording to "manufacture, production, distribution and/or use of such material" the words "making, printing, publishing, advertising, importing, distributing, selling and possessing of such materials".

75. The representative of China suggested to add, after the word "importing", the word "exporting".

76. The representative of Belgium proposed to delete the words "use of a child in a visual or audiovisual" and to replace the words "that shows" with the word "of".

77. The representative of Chile proposed to put the words "visual and audiovisual" into square brackets.

78. With regard to paragraph 4, the representatives of Cuba and Australia proposed to delete the word "[primary]".

79. The representative of Canada suggested a new wording for paragraph 4 reading as follows:

> "Child sex tourism, refers to [activities relating to] tourism one of the purposes of which is facilitating a commercial sexual relationship with a child."

80. The representative of Bangladesh proposed to replace the words "with the [primary] purpose of", with the words "that involves, inter alia".

81. The representative of the Philippines suggested that paragraph 4 could read as follows:

> "Child sex tourism refers to [activities relating to] tourism organized and advertised to facilitate a commercial sexual relationship with a child."

82. The representative of Bangladesh proposed to add, after the word "facilitate" the words "directly or indirectly".

83. At the 14th meeting, on 6 February 1996, the representative of the Netherlands submitted an alternative text for chapter II on definitions reading as follows:

> "1. For the purposes of this Protocol, States Parties shall define in their legislation sale of children, child prostitution and child pornography, in accordance with the objectives [of articles 34 and 35] of the Convention on the Rights of the Child and the present Protocol.
>
> "2. States Parties may, in their definitions, derogate from the majority age otherwise contained in their legislation."

84. At the 17th meeting, the representative of China, supported by the observer for Nigeria, proposed to move the text submitted by the Netherlands from part 1 of the annex to part 2.

85. That proposal was opposed by the representative of the Netherlands.

86. Due to the lack of time, the Chairman-Rapporteur then ruled that the text proposed by the Netherlands as an alternative text to the chapter on definition should remain in part 1 of the annex, on the understanding that all proposals will be given further consideration in the next session of the working group.

87. The ruling of the Chairman was accepted.

C. Implementation of pertinent instruments (Preamble)

88. On 31 January 1996, the representative of the United States of America, acting as a coordinator for chapter III on the implementation of pertinent instruments, submitted a proposal.

89. On 5 February 1996, the delegation of the United States of America, acting as coordinator, submitted a revised proposal containing preambular paragraphs which incorporated the proposals made by Cuba, China, India and the Russian Federation, as well as by Uruguay, acting as coordinator for chapter VI.

90. The working group also had before it the proposals of the delegations of India and Denmark and those put forward by Australia, acting as coordinator for chapter V, which contained the text of paragraphs for the preambular part.

91. Due to the lack of time, the working group was unable to discuss in plenary the proposals relating to the preamble of the draft optional protocol and decided to postpone their consideration until its next session.

92. The text of the proposed preambular paragraphs is reproduced in the annex (part 2).

D. Penalization, compensation and protection of children

93. On 1 February 1996, the delegation of France, acting as coordinator for chapter IV on penalization, compensation and protection of children, submitted a proposal concerning penalization and prosecution.

94. In the course of informal consultations held under the leadership of the coordinator for this chapter, various versions and amendments were submitted.

95. On 6 February 1996, the working group had before it a compilation of the latest proposals relating to chapter IV on penalization submitted by the delegation of France acting as coordinator for this chapter. Paragraph 3 of this chapter was proposed, after consultations, by the observers for Nigeria and the Islamic Republic of Iran. The proposals read as follows:

"Penalization and prosecution

"1. States Parties shall ensure that the sale of children, child prostitution and child pornography, [as defined in the first chapter] are offences under its criminal law and shall make these offences punishable by appropriate penalties which take into account their grave nature [and allow extradition].

"2. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences in the following cases:

"(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

"(b) When the alleged offender is a national of that State;

"(c) When the victim is a national of that State if that State considers it appropriate (art. 5.1 of the Convention against Torture).

"[3. States Parties shall undertake measures and adopt such legislation as necessary aimed at prohibiting the production of, access to and dissemination of material containing, promoting and encouraging sale of children, child prostitution and child pornography through various means including electronic media and modern telecommunication facilities.]

"[4. The above-mentioned offences shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties, and shall be included as extraditable in every extradition treaty subsequently concluded between them.

"If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Protocol as a legal basis for extradition in respect of such offences. Extradition shall be subjected to the conditions provided by the law of the requested State.

"States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

"Such offences shall be treated, for the purpose of extradition between State Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 2 (art. 8 of the Convention against Torture).

OR

"States Parties shall make every effort and necessary arrangement to include the sale of children, child prostitution and child pornography as extraditable offences in any extradition treaty.

OR

"The offences referred to above shall be regarded as extraditable offences in any extradition treaty which has been or may hereafter be concluded between any of the Parties to this Protocol.

"The Parties to the present Protocol which do not make extradition conditional on the existence of a treaty shall henceforth recognize the offences referred to above as cases for extradition between themselves.

"Extradition shall be granted in accordance with the law of the State to which the request is made (art. 8 of the Convention for the Suppression of the Traffic in Persons of 1948).

"[5. If an extradition request is made with respect to an offence described in the first chapter and if the requested State does not or will not extradite its nationals, the State of the national shall take

every measure to submit the case to its appropriate authorities with a view to determining whether sufficient grounds exist to prosecute, taking into account the double criminality rule.]

"Seizure and confiscation

"States Parties agree to take all necessary measures for the investigation and prosecution as well as the tracing, restraint and confiscation of the proceeds and instruments of the offences described above, including funds, property and other assets used by the offender to commit or promote the commission of such offence.

OR

"States Parties shall take all necessary and appropriate measures to allow the seizure and confiscation from persons convicted of the offences described in paragraph (1) of traceable gains made in the commission of the offences as well as all equipment and property used by such persons to commit or promote the commission of such offence.

OR

"States Parties agree to take all necessary measures to allow seizure and confiscation of gains from offences described above, and all the equipments used and materials produced by the offender for the commission of the offence."

96. During the consideration of these proposals, the working group modified them on the basis of various new proposals and amendments submitted by delegations. The texts relating to chapter IV on penalization and prosecution, and on seizure and confiscation, as modified, are reproduced in the annex (part 1).

97. The following substantive proposals and amendments were considered and/or taken into account by the working group.

98. The observer for Iraq suggested to move the word "compensation" from the title of chapter IV to the title of chapter VI on assistance and rehabilitation.

99. In paragraph 1 of the proposed text on penalization and prosecution, the representative of the Philippines proposed to insert the words "and all acts relating to them" after the word "chapter".

100. In paragraph 1, the representative of Germany proposed to delete the words "and allow extradition" at the end of paragraph 1. He also proposed to put paragraphs 3 and 4 under a new heading named "extradition".

101. Also in paragraph 1, the representative of Bangladesh proposed to insert the words "child sex tourism" after the words "child pornography" and the words "or any acts linked to these offences" after the words "these offences".

102. The representative of India proposed to reinstate the paragraph included in the original proposal by the coordinator with the word "if" deleted, reading:

> "A corporation or any other legal person can be prosecuted consistent with the legal system of a State."

Protection of children

103. A proposal concerning the protection of children, also under chapter IV, was submitted by the delegation of Bangladesh, acting as coordinator. It read as follows:

> "[1. States shall ensure that the acts of child victims of the sale of children, child prostitution and child pornography, directly related to these offences, is not criminalized.]
>
> "[2. States shall, [in accordance with article 40 of the Convention], ensure that the special interests of children are safeguarded at all stages of the judicial process.]
>
> "[3. States shall adopt all necessary measures to protect, without prejudice to the rights of the accused, the right to privacy of victims of the sale of children, child prostitution and child pornography, in particular by ensuring the confidentiality of files and avoiding dissemination of information that could lead to the identification of such child victims.]
>
> "[4. States shall ensure that, where there is uncertainty as to the actual age of a victim, he/she shall be presumed to be a minor until otherwise established.]
>
> "[5. States shall ensure strengthening and implementation of measures against sale of children, child prostitution and child pornography, including protection against cross-border trafficking, and providing special arrangements for the deportation and reintegration of child victims.]
>
> "[6. States shall adopt measures to ensure the safety and integrity of persons and/or institutions involved in the prevention and/or protection and rehabilitation of child victims of sale, prostitution and pornography, from any threat or act of aggression from persons or organizations.]"

104. During the consideration of this proposal, the working group modified it on the basis of various new proposals and amendments submitted by delegations. The following substantive proposals relating to the section on the protection of children were considered and/or taken into account by the working group.

105. For paragraph 1, the representative of Canada proposed a new text which reads as follows:

> "States Parties shall ensure that the acts of child victims coerced into child prostitution and child pornography, directly related to those offences, are not criminalized."

106. The representative of Ethiopia proposed to delete in paragraph 1 proposed by Bangladesh the words "the act of" and to replace the words "are not criminalized" with the words "are not liable to punishment".

107. The representative of the Philippines proposed a new wording for paragraph 1, reading as follows:

> "States Parties shall ensure that the child victims of sale, child prostitution and child pornography are not criminalized."

108. The representative of Bangladesh proposed that after the word "coerced" be added the words "forced or induced".

109. The observer for Belgium proposed to replace paragraph 2 with the following text:

> "States Parties shall, in accordance with article 40 of the Convention on the Rights of the Child, recognize at all stages the right of every child, including children coerced into sale of children, child prostitution and child pornography, to all legal guarantees and to be treated in a manner consistent with the promotion of the child's sense of dignity and worth which takes into account the desirability of ensuring the child's reintegration and child's assuming a constructive role in society."

110. In paragraph 3, the observer for Kenya proposed to delete the words "without prejudice to the rights of the accused".

111. The representative of Chile proposed to move paragraph 5 of this section to the chapter on international cooperation and coordination.

112. The representative of Chile also proposed a new paragraph as contained in document E/CN.4/1995/95, paragraph 112, reading as follows:

> "States shall adopt measures to ensure the immediate protection of children victims of these practices, as well as expeditious procedures for repatriation when appropriate."

113. The representative of Chile proposed an alternative text to paragraph 6, reading as follows:

> "6. States Parties shall adopt measures in order to protect the safety and integrity of those persons and/or institutions involved in the prevention and/or protection and rehabilitation of child victims of these

practices, from any threat or act of aggression from persons, [legal entities] or organizations profiting from the sale of children, child pornography and child prostitution."

114. The observer for Nigeria proposed to replace the title, which read "Protection of children", with the following wording: "Protection of child victims".

E. International cooperation and coordination

115. On 1 February 1996, the representative of Australia, acting as coordinator for chapter V on international cooperation and coordination, submitted a proposal.

116. In the course of informal consultations held under the leadership of the coordinator for this chapter, various versions and amendments were submitted.

117. On 7 February 1996, the working group had before it a compilation of the latest proposals relating to chapter V of the Guidelines which included the following texts:

(a) Proposals submitted by the delegation of Australia acting as a coordinator for this chapter. The proposals read as follows:

"Article A

"1. States Parties shall take all necessary steps to strengthen international cooperation by all appropriate means, including bilateral, multilateral and regional arrangements for the prevention, detection, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution and child pornography as defined in ... .

"Article B

"1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article ..., including the supply of all evidence at their disposal necessary for the proceedings.

"2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual legal assistance that may exist between them."

(b) Proposals submitted by the observer delegation of the Islamic Republic of Iran, which consisted of an article to be added to the texts proposed by Australia, reading as follows:

"States Parties shall, through bilateral and multilateral cooperation, undertake to take such measures as are deemed effective in eliminating the consumer market that nurtures the increase in the sale of children, child prostitution and child pornography on the basis of the principle of collective responsibility."

118. In the course of the consideration of this compilation of proposals, the working group modified them on the basis of various new proposals and amendments submitted by delegations. The texts, as modified, are reproduced in the annex (part 1).

119. The following substantive proposals and amendments were considered and/or taken into account by the working group.

120. The representative of India proposed to add two new articles. These articles, based on preambular paragraphs submitted earlier by Australia, acting as a coordinator for chapter V, read as follows:

> "Article C
>
> "States Parties shall ensure cooperation between their appropriate officials in tracing and apprehending and prosecuting those responsible for acts involving the sale of children, child prostitution and child pornography, and in investigating such acts, and to work with relevant non-governmental and international organizations to assist with the identification of offenders, bearing in mind the need to protect the privacy of all involved.
>
> "Article D
>
> "States Parties shall take all necessary steps to put in place effective bilateral, multilateral or regional arrangements for cooperation in the prevention, detection, prosecution and punishments of acts of tourism organized with the purpose of facilitating the effecting of a commercial sexual relationship with a child."

121. The representative of China proposed to amend new article C proposed by India by replacing the words "non-governmental" by "national" and the word "officials" by "authorities", whereas the representative of the Netherlands proposed the juxtaposition of the word "non-governmental" with the words "national and international".

122. The representative of Canada proposed to amend new article C by deleting the words "appropriate" and "relevant" and to replace the words "to assist with the identification of offenders" by the words "in this respect".

123. The representative of the Philippines proposed to amend new article D by replacing the words "acts of tourism" by the words "acts connected with child sex tourism" and to delete the remainder of the article.

124. The representative of the Netherlands proposed to replace the words "in eliminating the consumer market that nurtures" in the new article submitted by the Islamic Republic of Iran (see para. 117 (b) above) by the words: "in order to fight".

125. The observer for Nigeria proposed to add a new article based on a preambular paragraph submitted earlier by Australia, acting as coordinator for chapter V. The proposed article read as follows:

> "States Parties shall promote and strengthen international cooperation in the elimination of poverty, hunger and underdevelopment, all of which create an environment which may lead to the exploitation of children, particularly in developing countries, with a view to contributing to the elimination of sale of children, child prostitution and child pornography."

126. The observer for the Islamic Republic of Iran proposed to amend the new article proposed by Nigeria (see above) by modifying the beginning of the article to read as follows:

> "States Parties undertake to negotiate in good faith measures towards the elimination of poverty, hunger ... ."

127. The representative of Germany proposed an alternative article reading as follows:

> "States Parties shall refrain from using poverty and underdevelopment as a justification for child exploitation, sale of children, child prostitution and child pornography."

128. The representative of Chile proposed an alternative article reading as follows:

> "States Parties shall promote and strengthen international cooperation in the field of social development, paying particular attention to the needs of developing countries, with a view to contributing to the elimination of the sale of children, child prostitution and child pornography."

129. After consultations, the representative of Bangladesh proposed an alternative article reading as follows:

> "States Parties shall undertake measures to promote international cooperation to eliminate the root causes contributing to the vulnerability of children to the sale of children, child prostitution and child pornography, including poverty and underdevelopment."

130. The observer for Belgium proposed to amend the new article proposed by Bangladesh (see above) by replacing the beginning of the article with the following wording:

> "States Parties shall implement relevant international legal documents relating to the sale of children, child prostitution and child pornography, including the Convention on the Rights of the Child and all other relevant treaties and conventions, in order to eliminate the root causes contributing to the vulnerability ... ."

131. At the 17th meeting, the observer for Belgium supported by the delegations of Nigeria and Cuba suggested that article F, as included in the annex (part 1) to the present report, should not be in square brackets.

132. The representative of Canada stated that it had been agreed to put article F into square brackets.

133. The Chairman-Rapporteur then ruled that article F should appear in part 1 of the annex without square brackets, on the understanding that all proposals will be given further consideration in the next session of the working group. A number of delegations did not agree with said ruling and considered that article F should appear within brackets in part 1 of the annex.

F. Assistance and rehabilitation

134. On 1 February 1996, the observer for Uruguay, acting as a coordinator for chapter VI on assistance and rehabilitation, submitted a proposal.

135. On 7 February 1996, the working group had before it a compilation of the latest proposals relating to chapter VI of the Guidelines, submitted by the coordinator for this chapter. The proposals read as follows:

"1. States Parties shall adopt all feasible measures to ensure adequate assistance, [from an integral and interdisciplinary approach] including the medical, economic, social and legal assistance to child victims of sale of children, child prostitution and child pornography, with the aim of attaining their full physical and psychological recovery and social reintegration.

"2. States Parties shall pay special attention to the designing adoption and implementation of development and social integratio general policies and specific prevention programmes on social and economic assistance, mainly focused on children and families who live in extreme poverty or are part of vulnerable social groups, to promote an adequate standard of living for the physical, mental, spiritual, moral and social development of the child and to prevent any abuse.

OR

"States Parties shall adopt policies of development and implement prevention programmes, mainly focused on children and vulnerable groups, to contribute to preventing the sale of children, child prostitution and child pornography.

OR

"States Parties shall adopt special measures in order to protect children specially vulnerable to sale of children, child prostitution and child pornography.

"3. States Parties are encouraged to incorporate into their national legislation adequate provisions for the compensation of child victims of sale of children, child prostitution and child pornography."

136. During the consideration of these proposals, the working group modified them on the basis of various new proposals and amendments submitted by delegations. The texts relating to chapter VI, as modified, are reproduced in the annex (part 1).

137. The following substantive proposals and amendments were considered and/or taken into account by the working group.

138. The observer for Uruguay proposed to delete, in paragraph 1, the words [from an integral and interdisciplinary approach].

139. The observer for Uruguay proposed to replace, in the second option of paragraph 2, the words "policies of development" by the words "social development policies".

140. The representative of Mexico proposed to delete, in the second option of paragraph 2, the words "prevention" and "mainly".

141. The observer for the Islamic Republic of Iran proposed to insert, in the second option of paragraph 2 after the word "groups", the following phrase: "to promote an adequate standard of living for the physical, mental, spiritual, moral and social development of the child,".

142. The observer for Nigeria proposed a new paragraph reading as follows:

> "States Parties shall adopt all relevant policies that would promote an adequate standard of living for the physical, mental, spiritual, moral and social development of the child and to prevent any abuse."

143. The representative of Chile proposed to replace, in the second option of paragraph 2, the words "policies of development" by the words "social development policies as well as other relevant policies".

144. The observer for Uruguay proposed a new version of paragraph 3 reading as follows:

> "3. States Parties shall ensure that child victims have access to adequate procedures to seek compensation for damages and other negative consequences of these acts."

145. The representative of Canada proposed a new version of paragraph 3 reading as follows:

> "3. States Parties shall provide in their legislation child victims of sale of children, child prostitution and child pornography with the right to seek compensation."

146. The representative of the Philippines proposed to replace, in the new version of paragraph 3 proposed by Uruguay, the word "acts" by the word "offences".

G. Information, education and participation

147. On 1 February 1996, the representative of the Russian Federation, acting as a coordinator for chapter VII on information, education and participation, submitted a proposal.

148. On 2 February 1996, the representative of Canada submitted an alternative text.

149. On 2 February 1996, the working group had before it a new proposal relating to information, education and participation, submitted by the delegation of the Russian Federation.

150. On 5 February 1996, the observer for the Islamic Republic of Iran submitted the text of two articles containing an alternative wording.

151. Due to the lack of time, the working group was unable to discuss in plenary meetings the latest proposals relating to chapter VII and decided to postpone their consideration until its next session.

152. The text of proposals is reproduced in the annex (part 2).

H. Other matters

153. On 31 January 1996, the working group had before it a proposal submitted by the observer for the Islamic Republic of Iran which contained the text of an independent article. The working group also had before it the guidelines relating to the questions of non-discrimination, reservations and reporting, as elaborated at its first session (E/CN.4/1995/95, annex I). Due to lack of time, the working group was unable to consider in plenary the above-mentioned proposal and the guidelines and decided to postpone their consideration until its next session.

154. The text of the proposal and the guidelines is reproduced in the annex (part 2).

155. At the 16th meeting, on 7 February 1996, the Chairman recommended that the question of the structure of the draft optional protocol be considered at the next session of the working group.

Annex

DRAFT OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

Part 1. Texts resulting from the debates held by the working group at its second session

CHAPTER II. DEFINITIONS

[Article 1

For the purposes of this Optional Protocol the following definitions shall apply:

1. "Sale of children" means the act of buying [and] [or] selling of a child [between any person [or institution] having custody or control over the child, and any other person [or institution] [for the purpose of] [for whatever purpose including] child prostitution [or] child pornography] [work of any kind, adoption for commercial purposes, criminal activities, trading in and transplantation of organs] for any form of compensation or reward.]

OR

[1. "Sale of children" means and includes all unlawful acts involved in the capture, acquisition, transfer, control or disposal of a child with purposes or intent of securing financial or other reward or consideration.]

2. "Child prostitution" means the act of obtaining, procuring or offering the service of a child or inducing a child to perform sexual acts for any form of compensation or reward, [or any act that are linked to that offence] [even with the consent of the child.]

3. "Child pornography" includes both visual and audio pornography. "Visual pornography" means the visual depiction of a child engaged in explicit sexual activity, [real or simulated], or the [lewd] exhibition of [children's] genitals intended for the sexual gratification of the user, and involves the [manufacture, production, distribution and/or use of such material.] [making, printing, advertising, publishing, [importing, exporting,] distributing, selling and possessing of such materials.] ["Audio pornography" means the use of any audio devices using a child's voice, [real or simulated], intended for the sexual gratification of the user, and involves the [manufacture, production, distribution and/or use of such material.] [making, printing, advertising, publishing, [importing and exporting], distributing, selling and possessing of such material.]]

OR

3. "Child pornography" means the [visual or audiovisual] representation of a child engaged in explicit sexual activity, the dominant character of which is the depiction for a sexual purpose of a sexual organ or the anal region of a child and includes the making, printing, publishing, importing, distributing, selling, advertising and possessing of such materials.

[4. "Child sex tourism" refers to [activities relating to] tourism organized to facilitate, directly or indirectly, a commercial sexual relationship with a child.]]

OR

[Article 1

1. For the purposes of this Protocol, States Parties shall define, in their legislation, sale of children, child prostitution, child pornography and [child sex tourism], in accordance with the objectives [of articles 34 and 35] of the Convention on the Rights of the Child and the present Protocol.

2. States parties may, in their definitions derogate from the majority age otherwise contained in their legislation.]

CHAPTER IV. PENALIZATION AND PROTECTION OF CHILDREN

Penalization and prosecution

1. Each State Party shall ensure that the sale of children, child prostitution, child pornography [and child sex tourism], [as defined in the first chapter] are offences under its criminal law and shall make these offences punishable by appropriate penalties which take into account their grave nature.

1 bis. [A corporation or any other legal person can be prosecuted consistent with the legal system of a State.]

2. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences in the following cases:

(a) When the offences are committed in any territory under its urisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate (art. 5.1 of the Convention against Torture).

[3. States parties shall undertake measures and adopt such legislation as necessary aimed at prohibiting the production of, access to and dissemination of material containing, promoting and encouraging sale of children, child prostitution and child pornography through various means including electronic media and modern telecommunication facilities.]

Extradition

[4. The above-mentioned offences shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties, and shall be included as extraditable in every extradition treaty subsequently concluded between them.

If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this protocol as a legal basis for extradition in respect of such offences. Extradition shall be subjected to the conditions provided by the law of the requested State.

States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

Such offences shall be treated, for the purpose of extradition between State Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 2 (art. 8 of the Convention against Torture).]

OR

[4. States Parties shall make every effort and necessary arrangement to include the sale of children, child prostitution and child pornography as extraditable offences in any extradition treaty.]

OR

[4. The offences referred above shall be regarded as extraditable offences in any extradition treaty which has been or may hereafter be concluded between any of the Parties to this Protocol.

The Parties to the present Protocol which do not make extradition conditional on the existence of a treaty shall henceforth recognize the offences referred above as cases for extradition between themselves.

Extradition shall be granted in accordance with the law of the State to which the request is made (art. 8 of the Convention for the Suppression of the Traffic in Persons of 1948).]

[5. If an extradition request is made with respect to an offence described in the first chapter and if the requested State does not or will not extradite its nationals, the State of the national shall take suitable measures to submit the case to its authorities with a view to determining whether sufficient grounds exist to prosecute, taking into account the double criminality rule.]

Seizure and confiscation

[6. States Parties agree to take all necessary measures for the investigation and prosecution as well as the tracing, restraint and confiscation of the proceeds and instruments of the offences described above, including funds, property and other assets used by the offender to commit or promote the commission of such offence.]

OR

[6. States Parties shall take all necessary and appropriate measures to allow the seizure and confiscation from persons convicted of the offences described in paragraph (1) of traceable gains made in the commission of the offences as well as all equipment and property used by such persons to commit or promote the commission of such offence.]

OR

[6. States Parties agree to take all necessary measures to allow seizure and confiscation of gains from offences described above, and all the equipments used and materials produced by the offender in the commission of the offence.]

Protection of [children] [child victims]

[1. States Parties shall ensure that the [acts of] child victims of [coerced into] [forced into] [the] sale [of children], child prostitution and child pornography, [directly related to these offences], are not criminalized. [are not liable to punishment.]]

[2. States Parties shall, [in accordance with article 40 of the Convention], ensure that the special interests of children are safeguarded at all stages of the judicial process.]

OR

[2. States Parties shall, in accordance with article 40 of the Convention on the Rights of the Child, recognize at all stages the right of every child, including children [coerced into] sale of children, child prostitution and child pornography to all legal guarantees, and to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which takes into account the desirability of [promoting] [ensuring] the child's reintegration and child's assuming a constructive role in the society.]

[3. States Parties shall adopt all necessary measures to protect, [without prejudice to the rights of the accused], the right to privacy of victims of the sale of children, child prostitution and child pornography, in particular by ensuring the confidentiality of files and avoiding dissemination of information that could lead to the identification of such child victims.]

[4. States Parties shall ensure that, where there is uncertainty as to the actual age of a victim, he/she shall be presumed to be a minor until otherwise established.]

[5. States Parties shall adopt measures to ensure the immediate protection of children victims of these practices, as well as expeditious procedures for repatriation when appropriate.]

[6. States Parties shall adopt measures to ensure the safety and integrity of persons and/or institutions involved in the prevention and/or protection and rehabilitation of child victims of sale, prostitution and pornography, from any threat or act of aggression from persons or organizations.]

OR

[6. States Parties shall adopt measures in order to protect the safety and integrity of those persons and/or institutions involved in the prevention and/or protection and rehabilitation of child victims of these practices, from any threat or act of aggression from persons, [legal entities] or organizations profiting from the sale of children, child pornography and child prostitution.]

CHAPTER V. INTERNATIONAL COOPERATION AND COORDINATION

[Article A

States Parties shall take all necessary steps to strengthen international cooperation by all appropriate means, including bilateral, multilateral and regional arrangements for the prevention, detection, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution and child pornography [as defined in ... .]]

Article B

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article ..., [including the supply of all evidence at their disposal necessary for the proceedings.]

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual legal assistance that may exist between them.

[Article C

States Parties shall ensure cooperation between their authorities in tracing and apprehending and prosecuting those responsible for acts involving the sale of children, child prostitution and child pornography, and in investigating such acts, and to work with [relevant] [national], [non-governmental] and international organizations in this respect, bearing in mind the need to protect the privacy of all involved.]

[Article D

States Parties shall take all necessary steps to put in place effective bilateral, multilateral or regional arrangements for cooperation in the prevention, detection, prosecution and punishments of acts connected to child sex tourism.]

[Article E

States Parties shall, through bilateral and multilateral cooperation, undertake to take such measures as are deemed effective [in eliminating the consumer market that nurtures] [in order to fight] [the increase in] the sale of children, child prostitution, child pornography [and child sex tourism] [on the basis of the principle of collective responsibility].]

Article F*

States Parties shall implement all relevant international legal instruments related to sale of children, child prostitution and child pornography, including the Convention on the Rights of the Child and all other relevant treaties and conventions to which they are party in order to eliminate the root causes contributing to the vulnerability of children victims of sale, prostitution and pornography, including poverty and underdevelopment.

[Article G

States Parties shall ensure strengthening and implementation of measures against sale of children, child prostitution and child pornography, including protection against cross-border trafficking, and providing special arrangements for the deportation and reintegration of child victims.]

CHAPTER VI. ASSISTANCE, REHABILITATION AND COMPENSATION

[1. States Parties shall adopt all feasible measures to ensure adequate assistance, including medical, economic, social and legal assistance to victims of sale of children, child prostitution and child pornography, with the aim of attaining their full physical and psychological recovery and social reintegration.]

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* See para. 133.

[2. States Parties shall adopt social development policies as well as other relevant policies and implement programmes, focused on children and vulnerable groups [to promote an adequate standard of living for the physical, mental, spiritual, moral and social development of the child] that would contribute to preventing the sale of children, child prostitution and child pornography.]

OR

[2. States Parties shall adopt special measures in order to protect children specially vulnerable to sale of children, child prostitution and child pornography.]

3. States Parties shall ensure that child victims of sale, prostitution and pornography have access to adequate procedures to seek compensation [from the offender] for [damage and other] negative consequences of these offences.

OR

3. States Parties shall provide in their legislation child victims of sale, prostitution and pornography with the right to seek compensation for the negative consequences of these offences.

Part 2. Texts left for consideration by the working group at its next session

PREAMBLE (FORMER CHAPTER III. IMPLEMENTATION OF PERTINENT INSTRUMENTS)

Proposal submitted by the delegation of the United States of America acting as coordinator

Emphasizing the importance of preventing and eradicating the sale of children, child pornography and child prostitution through effective national legislation and domestic measures, including measures aimed at minimizing access to and dissemination of materials promoting the sale of children, child pornography and child prostitution, through written, visual, or modern telecommunication and electronic media,

Stressing the continuing need for effective implementation by States of relevant international legal instruments relating to the sale of children, child prostitution and child pornography, including the Convention on the Rights of the Child and all other relevant treaties and conventions to which they are party,

Giving due regard to the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the other relevant decisions and recommendations of pertinent international bodies,

Encouraging appropriate activities of, and cooperation with, relevant international and non-governmental organizations, with respect to the sale of children, child pornography and child prostitution, in line with their respective national legislation,

Recalling that in the Convention on the Rights of the Child, States Parties undertook to protect the child from all forms of sexual exploitation and sexual abuse,

Bearing in mind that the majority of the child victims in the sale of children, child prostitution and child pornography are from developing countries,

Believing that the elimination of the consumer market will effectively reduce the sale of children, child prostitution and child pornography,

Recognizing that while poverty or underdevelopment create an environment which may lead to child exploitation, the sale of children, child prostitution and child pornography cannot under any circumstances be justified by reason of such poverty or underdevelopment,

Recognizing the need to address the root causes contributing to the vulnerability of the child to sale of children, child prostitution and child pornography, including poverty and underdevelopment,

Deeply concerned at the widespread and continuing practice of sex tourism to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing the trans-border nature of prevailing practices that promote the commercial sexual exploitation of children,

Emphasizing in this regard the importance of establishing effective international cooperation, including bilateral, multilateral and regional arrangements, providing for penalization, prevention, detection, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution and child pornography,

Emphasizing that nothing in this Protocol prejudices the legitimate adoption of children consistent with the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally,

Recognizing that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

Proposal submitted by Denmark

Keeping in mind that any person regarding whom proceedings are brought in connection with any of the offences referred to above should be guaranteed fair treatment at all stages of the proceedings (art. 7, para. 3 of the Convention against Torture).

Proposal submitted by the delegation of Australia acting as a coordinator for Chapter V

Encouraging States Parties to work to ensure cooperation between their appropriate officials in tracing and apprehending and prosecuting those responsible for acts involving the sale of children, child prostitution and child pornography, and in investigating such acts, and to work with relevant non-governmental and international organizations to assist with the identification of offenders, bearing in mind the need to protect the privacy of all involved,

Encouraging States Parties also to take all reasonable steps to put in place effective bilateral, multilateral or regional arrangements for cooperation in the prevention, detection, prosecution and punishment of acts of tourism organized with the purpose of facilitating the effecting of a commercial sexual relationship with a child,

Considering that States Parties should strengthen cooperation in providing assistance, rehabilitation and repatriation where this is appropriate to child victims of sale, prostitution and pornography,

Considering also that States Parties should take all feasible measures, through bilateral and multilateral cooperation and on the basis of collective responsibility, to eliminate the sale of children, child prostitution and child pornography,

Encouraging States Parties to promote and strengthen international cooperation in the elimination of poverty, hunger and underdevelopment, all of which create an environment which may lead to the exploitation of children, particularly in developing countries, with a view to contributing to the elimination of sale of children, child prostitution and child pornography.

CHAPTER VII. INFORMATION, EDUCATION AND PARTICIPATION

Proposal submitted by the delegation of the Russian Federation acting as coordinator

States Parties in accordance with international norms for the protection of children promote education, information and public awareness of the effects of the sale of children, child pornography and child prostitution. For these purposes States Parties strengthening measures at international and national levels shall, inter alia:

(a) Launch campaigns, actively involving the media and other participants to sensitize and inform people to the gravity and dangers

that flow from the sale of children, child pornography and child prostitution (and avoiding the dissemination of programmes that may be conducive to the encouragement of such exploitation). These campaigns address all those persons who are responsible for taking care of children; parents, educators and all others, such as associations, tourist agencies and tourists, as well as the public. They focus on the dissemination of information on the rights of the child, the condemnation of and the fight against all forms of exploitation of children;

(b) Encourage the inclusion in educational efforts of information on the risks that children may run in regard to the sale of children, pornography, and child prostitution and on how they can defend themselves, taking into account in particular the right of the family to its integrity, the fundamental right of every child to the integrity of his own body and the protection of his identity and his rights as laid down in the Convention;

(c) Promote other programmes aimed at heightening public awareness, and improving the training of those who have functions involving support for and protection of children in the fields of education, health, social welfare and the justice system, in order to enable them to identify the phenomena of the sale of children, child pornography and child prostitution;

(d) Inform the public of relevant measures adopted and the number of prosecutions and sentences imposed in cases involving the sale of children, child pornography and child prostitution. The outcome of the proceedings instituted should be made public, while ensuring the anonymity of the victims, as well as the respect of their rights, in particular their right to privacy;

(e) To make use of the means to ensure respect for social, spiritual and moral values;

(f) Promote greater involvement of the general public in disseminating the notion of protection of the child as an ethical principle common to all cultures and in the implementation of programmes established for such purposes.

Proposal submitted by the delegation of Canada

States Parties shall promote public awareness of the effects of the sale of children, child pornography and child prostitution.

Proposal submitted by the delegation of the Russian Federation

States Parties through education, information and participation of the public at large including children (shall) promote awareness (of the society) of the (harmful) effects of the sale of children, child pornography and child prostitution.

OR

States Parties agree to take or to encourage through their public and private educational health, social and other related services, mass media measures or the promotion of awareness of the harmful effects of the sale of children, child pornography and child prostitution.

OR

States Parties undertake to arrange for appropriate publicity warning the public of the harmful effects of the sale of children, child pornography and child prostitution.

Proposal submitted by the delegation of the Islamic Republic of Iran

Article A

States Parties shall promote awareness at all levels of the grave problems of sale of children, child prostitution and child pornography and to ensure respect for social, spiritual and moral values through education and information at the national and international levels.

Article B

States Parties shall endeavour to involve the media as an active partner to sensitize and inform people of the gravity and dangers that flow from the sale of children, child prostitution and child pornography and agree to take or to encourage mass media measures to prevent dissemination of programmes that may be conductive to the encouragement of such exploitation.

CHAPTER VIII. OTHER MATTERS

Proposal submitted by the Islamic Republic of Iran

An independent article:

Nothing in this Protocol shall be interpreted in a manner to affect the right of each State to take any appropriate measures aimed at combating sale of children, child prostitution and child pornography.

Non-discrimination (as contained in document E/CN.4/1995/95, annex I)

The provisions of a possible optional protocol should be implemented without discrimination of any kind as set forth in article 2 of the Convention on the Rights of the Child.

Reservations (as contained in document E/CN.4/1995/95, annex I)

A possible optional protocol should consider the question of reservations.

Reporting (as contained in document E/CN.4/1995/95, annex I)

A possible optional protocol should contain a provision relating to the inclusion of information regarding the implementation of the protocol in the regular reports submitted by States who are party to the Optional Protocol to the Committee on the Rights of the Child, pursuant to article 44 of the Convention on the Rights of the Child.